

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEYON ANDREW NEAL,

Defendant-Appellant.

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UNPUBLISHED  
December 2, 2003

No. 233196  
Macomb Circuit Court  
LC No. 00-008001

ON REMAND

Before: Talbot, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

On October 3, 2003, the Michigan Supreme Court issued an order vacating this Court's opinion dated November 22, 2002, and remanding for reconsideration in light of *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003).<sup>1</sup> Although the broad language of the remand order suggests that this Court's opinion is vacated in its entirety, the Supreme Court could not have intended such a result given the limited purpose of the remand. Therefore, we address only the sentencing issue affected by *Babcock*, and our prior opinion shall stand as written.

The facts of this case were succinctly set forth in our previous opinion. *People v Neal*, unpublished opinion per curiam of the Court of Appeals, issued November 22, 2002 (Docket No. 233196):

This case arises from a shooting spree that took place in and near CJ's Lounge, on East Warren in Detroit, during the early morning hours of May 28, 2000.

Tony Carson testified that he was outside the bar in question when he noticed two men who were arguing come around a corner; the two men met briefly with a woman and another man near a car. Carson added that the back door of the car was open, "and then he opened the trunk." The man who had been with the woman at the car started walking in Carson's direction. According to Carson, when he turned and looked because he heard someone running, the person behind him said something about Carson being nosy and shot him in the face. Carson identified defendant as his assailant. Carson saw the shooter go into CJ's, then heard more gunshots.

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<sup>1</sup> *People v Neal*, Order of the Michigan Supreme Court (Docket No. 123086, issued October 3, 2003).

Asked what the man who shot him was wearing, Carson described a matching-red shirt and hat combination.

David Franklin testified that he was working security at CJ's on the night in question. Franklin recounted that he had frisked defendant three times that night, because the latter repeatedly left the club and returned, and added that "[w]hen he first came he had on . . . a Gucci or Coogi shirt, sweater with a hat that match." Franklin testified that, while stationed "back in the corridor," outside the club, he heard gunshots, after which defendant came to him and pointed two guns at his head. Franklin dropped to his knees and prayed in response, after which he heard more gunshots. According to Franklin, on this occasion defendant was dressed in a cap, blue jeans, and a dark blue sweater, adding "he changed his clothes."

Toi Reid testified that her husband, Willie Reid, was killed in her presence that night. Reid recounted that she, her husband, and other relatives were having a "cabaret" party at CJ's with David Franklin providing security at the door. According to Reid, she was outside the club when she heard a gunshot, shortly after which defendant walked past her with a gun and ran into the club. Reid followed defendant into the club out of fear for her husband, but when she got to the door defendant "was blowing my husband['s] brains out."

Defendant was charged with first-degree murder in connection with Willie Reid, assault with intent to commit murder in connection with Tony Carson, and felonious assault in connection with David Franklin, along with felony-firearm. The jury found defendant not guilty of murder, but guilty of the other charges.

The trial court departed from the sentencing guidelines of 171 to 285 months for the assault with intent to murder conviction and thirty-two to forty-eight months for the felonious assault conviction. Defendant sought resentencing on appeal, arguing that the departure constituted an abuse of discretion. We disagreed, relying on *People v Babcock*, 244 Mich App 64; 624 NW2d 479 (2000) (*Babcock I*). Following the remand ordered in *Babcock I*, this Court issued an opinion in *People v Babcock*, 250 Mich App 463; 648 NW2d 221 (2002) (*Babcock II*). Leave to appeal was granted by our Supreme Court in *Babcock II*, resulting in *Babcock III*, which now provides the framework by which we must review the guideline departure in this case.

In our previous opinion, we concluded that, "A review of the sentencing transcript reveals that the trial court identified objective and verifiable factors to support its conclusion that there were substantial and compelling reasons to justify a departure from the guidelines," and found no abuse of discretion in the sentence imposed. Applying the relevant portions of the framework laid out in *Babcock III*, *supra* at 272-274, we again reach the same conclusion.

Affirmed.

/s/ Michael J. Talbot  
/s/ Janet T. Neff  
/s/ E. Thomas Fitzgerald